

Statement of
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Hearing on
Constituent Services:
Building a More Customer-Friendly Congress

Before the
Select Committee on the Modernization of Congress
United States House of Representatives

July 14, 2022

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Chairman Kilmer, Vice Chair Timmons, and members of the Select Committee.

Thank you for inviting me today to speak about the Congressional Affairs Program of the Taxpayer Advocate Service (TAS) and the constituent services it provides to local and Washington DC congressional offices.¹ During my tenure as National Taxpayer Advocate (NTA) from 2001 to 2019, I was keenly aware that, although initially created by the IRS in the 1970s, the Office of the Taxpayer Advocate was codified by Congress in response to significant and continuing complaints about how the IRS treated its taxpayers.² In my testimony today I will discuss how the statutory design of this office and the procedures we implemented can serve as a model for constituent service between the executive and legislative branches.³

Taxpayer Advocate Service casework approach embodies constituent service.

Constituent service is reflected in the very mission of the Office of the Taxpayer Advocate. Internal Revenue Code § 7803(c)(2)(A) sets forth the four-prong mission of the office:

- (i) Assist taxpayers in resolving problems with the Internal Revenue Service;
- (ii) Identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
- (iii) To the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and

¹ Nina E. Olson is the Executive Director of the Center for Taxpayer Rights, a 501(c)(3) organization she founded in 2019 dedicated to furthering the protection of taxpayer rights and access to justice in tax systems in the United States and internationally. From March 1, 2001 to July 31, 2019, she served as the National Taxpayer Advocate. Prior to her service as the National Taxpayer Advocate, in 1992, Ms. Olson founded and served as the Executive Director of The Community Tax Law Project in Richmond, Virginia, which was the first independent low income taxpayer clinic in the nation. She is an attorney, licensed to practice in the Commonwealth of Virginia. The views expressed in her testimony are her own.

² In 1979, the Commissioner established the Taxpayer Ombudsman's office, which had national management of Problem Resolution Program. Memorandum from Kirsten Wielobob, Counsel to the Nat'l Taxpayer Advocate to Henry O. Lamar, Jr., Acting Nat'l Taxpayer Advocate, on Legal Authority of the Taxpayer Advocate – Historical Development 2–3 (Jan. 16, 2001). The Taxpayer Ombudsman was created in the Taxpayer Bill of Rights ("TBOR I") adopted legislatively in 1988 in the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, 102 Stat. 3342, and expanded and strengthened in 1996 in the Taxpayer Bill of Rights 2, Pub. L. 104-168, 110 Stat. 1452 (1996) and again in 1998 in the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, § 1102(a), (c), (d), 112 Stat. 685 [hereinafter RRA 98].

³ With the onset of the pandemic, TAS constituent service to taxpayers and Congressional offices has suffered significantly. For example, during the height of the pandemic TAS ceased to accept any cases relating to tax return and refund processes delays. See, e.g., Memorandum for Taxpayer Advocate Service Employees from Erin M. Collins, National Taxpayer Advocate, *Interim Guidance – Economic Impact Payments* (11.23/2020) and Memorandum for Taxpayer Advocate Service Employees from Bridget Roberts, Deputy National Taxpayer Advocate, *Interim Guidance on Exceptions to TAS Case Acceptance Criteria Taxpayer Issues Solely Related to the Processing of Original and Amended Returns with No Indication of IRS Receipt of the Return* (01.19.2021). After much criticism, TAS only recently began accepting Congressional refers relating to these cases, but they are subject to many restrictions. See Memorandum for Taxpayer Advocate Service Employees from Bridget Roberts, Deputy National Taxpayer Advocate, *Interim Guidance on Changes to TAS Case Acceptance Criteria* (05.13.2022).

- (iv) Identify potential legislative changes which may be appropriate to mitigate such problems.

That first prong – help taxpayers solve their problems with the IRS – is the focus of the Case Advocacy function of TAS. To deliver that mission, Congress *required* the NTA to establish at least local office in every state.⁴ Today, TAS has 75 local offices, at least one in every state as well as the District of Columbia and Puerto Rico. Some states with larger populations have more than one office. Each office is headed by a Local Taxpayer Advocate (LTA) and staffed with case advocates who work on taxpayer cases. Case advocates maintain an inventory; that is, they “own” their caseload. Early in my tenure as NTA we arranged for every single case advocate to have their own toll-free phone line extension that would ring on their desk, so that taxpayers would have a way of directly getting in touch with the case advocate assigned to work their case. Even if the case advocate was on the phone with another person, taxpayers could leave messages knowing that their case advocate would receive them directly. We later added a feature so that calls and messages could be received on case advocates’ laptops.

To get a case accepted into TAS, a taxpayer has to experience “significant hardship,” which is defined in both the Internal Revenue Code and regulations.⁵ The definition can range from a significant privation, or imminent threat of harm or adverse impact, or a delay over and above normal processing times. In fact, the cost of representation can be a significant hardship – for example, where retaining a tax professional to help you solve the problem with the IRS would cost more than the tax the IRS is wrongfully trying to collect. This is when TAS can get involved.

The other notable point is that TAS assistance is available to all taxpayers – individuals, small and medium businesses, large entities, nonprofit entities, even municipalities, states, and tribal governments. Congress did not make a distinction between taxpayer types; it recognized that regardless of size or entity, a taxpayer could get caught in the maze of IRS procedures and need the help of internal experts to sort things out.

To simplify matters for taxpayers, TAS has developed four categories of “criteria codes” for case acceptance: Economic Burden, Systemic Burden, Best Interests of the Taxpayer, and Public Policy/Taxpayer Rights.⁶ Economic burden arises when the taxpayer is experiencing or about to experience economic harm (more than mere inconvenience) because of something the IRS is doing, about to do, or isn’t doing. Systemic burden occurs when the taxpayer has tried to resolve the matter but IRS processes are not working as they should – there are delays, or the IRS isn’t responding, or the IRS doesn’t have a procedure for the issue the taxpayer presents. The “Best Interests” category is for those cases that don’t fit neatly into the other two categories but where there is clearly something going wrong that is causing harm to the taxpayer. Finally, cases are accepted on the grounds of public policy according to a memorandum the NTA issues,

⁴ IRC § 7803(c)(2)(D)(i)(I).

⁵ See I.R.C. § 7811(a)(1)-(2); Treas. Reg. § 301.7811-1(a)(4):

The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS.

Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer’s problem or dispute with the IRS.

⁶ Internal Revenue Manual (I.R.M.) § 13.1.7.2 and 13.1.7.3 (rev. 09.21.2021).

designating such issues. In all cases, TAS is not meant to substitute for IRS procedural protections such as administrative appeals. However, TAS can step in where those protections are ignored, are insufficient, or are failing to resolve the dispute.

Between 2001 and 2019, TAS received over 4 million cases. For each of those cases, TAS assigned at least one issue code describing what was involved in the case – *e.g.*, an Earned Income Tax Credit audit or a request for federal tax lien release or a frozen tax return/refund flagged for identity theft. With over 100 issue codes available, TAS cases paint a clear picture of where taxpayers are struggling and where IRS procedures seem to be confusing or deficient. Many cases have more than one issue code because as the Case Advocate works on them, more issues (and more tax years) are uncovered. One of TAS’s case quality standards is that the employee must address all related issues – we didn’t want a taxpayer to leave TAS with outstanding issues. This was our chance to do right by the taxpayer.

The TAS Congressional Affairs Program is designed to promote strong relationships with and good constituent service to local Congressional offices.

The Congressional Affairs Program grows out of TAS’s geographic approach to its casework.⁷ TAS’ Local Taxpayer Advocate offices are responsible for working all case-related issues that congressional offices send to the IRS. Every congressional district and state are assigned to one LTA office. In this way, relationships and trust between the LTA, case advocates, and local congressional staff build up over time. TAS guidance to employees requires Congressional case referrals receive a high priority. When TAS receives a case from the local congressional office, the case must be added to the TAS’ case management system with one day of receipt, coded by case criteria and issue codes, and assigned to the local office aligned with the congressional office.⁸

The importance of congressional cases is reaffirmed by the requirement that all correspondence with the congressional office must be signed by the Local Taxpayer Advocate – it cannot be delegated.⁹ (The exception is where the issue or case is controlled by the NTA herself. All inquiries regarding that matter or case are directed to the NTA’s office.) TAS has even created a separate IRM section addressing congressional letter writing.¹⁰ One helpful requirement is that faxes to congressional offices must be proper letters signed by the LTA, not “quick fax cover sheets.”¹¹ This is meant to ensure that communications with congressional offices are substantive and not mere “stall letters” or quick notes. When information is provided to the congressional office about a case, TAS’s case management system must be updated with that information, including the estimated completion date provided the office, the specific documents requested from the taxpayer; the date for a call back, and even an apology for what the taxpayer has experienced.¹²

⁷ The Congressional Affairs Program (CAP) is described in Internal Revenue Manual (IRM) 13.1.8.

⁸ IRM 13.1.8.3 (rev. 10.08.2021).

⁹ IRM 13.1.8.2(7) (rev. 10.08.2021).

¹⁰ See IRM 13.1.8.7 (rev. 10.08.2021).

¹¹ IRM 13.1.8.7(5) (rev. 10.08.2021).

¹² IRM 13.1.16.8.7(10) (rev. 10.04.2021).

LTAs are required to visit each local congressional office at least once a year. When local congressional offices hire new staff, the LTAs are required to reach out to the staff and explain how to best interact with TAS – explain the criteria codes, the way TAS works cases, the procedures for receiving authorization from the taxpayer for TAS to communicate with the local office about the specifics of the taxpayer.¹³

TAS Casework leads to systemic advocacy and recommendations.

The hundreds of thousands of cases TAS receives each year are a gold mine of data with which to identify systemic problems – problems that are affecting not just the specific taxpayer involved in the case but a group of taxpayers, or all taxpayers. TAS headquarter and area analysts, including TAS’s dedicated research staff, analyze TAS case data to identify trends in IRS program areas. Because all cases have at least one issue code, analysts are able to compute the relief rate for specific issues/program areas and delve into the facts of cases to determine what procedures or factors caused the problem in the first place. This data can be reviewed to isolate a problem that is occurring at a local level, or across offices to determine if it is a national problem. Moreover, as the IRS relies more and more on historical data to train its models, filters, and artificial intelligence algorithms, TAS case data should be used to train AI models to overcome historical bias. That is, where TAS obtained relief for taxpayers, the machine can learn from these cases what factors caused a case to be selected for an enforcement action and modify the selection model so similar taxpayers are not burdened going forward.

TAS constituent case data also helps the Systemic Advocacy function of TAS advocate internally for improvement to IRS procedures. TAS attorney-advisors and systemic advocacy analysts serve on IRS teams and working groups that cover all aspects of tax administration. They also review all draft Internal Revenue Manual provisions (*i.e.*, instructions to IRS employees) relating to audit, collection, appeals, penalties, and other agency programs that impact taxpayer rights. The experience of TAS local offices and our case data relating to these issues informs the recommendations TAS makes regarding IRS employee guidance. In this way, through TAS pre-decisional advocacy, it can prevent problems from occurring or recurring, thereby minimizing burden and harm to constituents.

The annual Congressional Affairs Program Conference highlights constituent experiences and furthers TAS systemic advocacy.

TAS being inside the IRS does raise the challenge of reassuring taxpayers that you are independent of the IRS and bring a robust advocacy perspective to your work. Congress aided TAS in this endeavor by requiring TAS “at the initial meeting with any taxpayer seeking the assistance of a local office of the taxpayer advocate, [to] notify such taxpayer that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate”.¹⁴ The statute further protects the independence of the office by granting the NTA and LTAs the discretion not to disclose to IRS

¹³ See IRM 13.1.8.8, *Disclosure Issues* (rev. 10.08.2021).

¹⁴ I.R.C. § 7803(c)(4)(A)(iii).

officers and employees any information the taxpayer has shared with TAS, including the fact the taxpayer has sought TAS's assistance.¹⁵

Congress also gave the National Taxpayer Advocate a very important vehicle with which to independently raise her concerns about taxpayer problems and directly make administrative and legislative recommendations to Congress. Specifically, the Internal Revenue Code requires the NTA to submit two reports directly to the House Ways and Means Committee and Senate Committee on Finance "without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget."¹⁶ In the end-of-year annual report, the NTA must identify the 10 most serious problems taxpayers experience, the 10 most litigated issues, and make administrative and legislative recommendations to mitigate those problems.¹⁷

The two reports issued yearly give the NTA an opportunity to provide Congress with an uncensored perspective on the operations of the IRS and how they affect taxpayers. The reports are grounded in both the case and systemic advocacy work TAS does every day. In identifying the 10 most serious problems, Congress requires the NTA to consult with Local Taxpayer Advocates about what they are seeing on the ground. In this way, the tax issues that constituents are experiencing every day are elevated to the attention of Congress.

The annual Congressional Affairs Program (CAP) conference completes the circle of TAS's systemic advocacy and constituent service. Held in February of each year, it brings Local Taxpayer Advocates to Washington, DC for an annual leadership conference. Prior to the conference, LTAs contact the members of Congress aligned to their offices and schedule meetings with Members or staff over a period of two and half days. When I was the NTA, I conducted a half-day briefing for the LTAs on the issues highlighted in the Annual Report, including legislative recommendations that could improve the experience of taxpayers dealing with the IRS or better protect their rights before the agency. During visits on the Hill, LTAs were able to share with the Members their first-hand experiences, based on their casework, thereby bringing our recommendations "close to home." After their congressional visits, LTAs would share with me any comments or expressions of interest from the Members, and I or my senior advisor was able to follow up with the Members or staff. These visits often resulted in legislation being introduced. In fact, 18 years of visits culminated in the passage of the Taxpayer First Act¹⁸ on July 1, 2019, which contained over twenty of our legislative recommendations, all of which were grounded in the experience of TAS casework.

¹⁵ I.R.C. § 7803(c)(4)(A)(iv) (providing that each local taxpayer advocate "may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.").

¹⁶ I.R.C. § 7803(c)(2)(B)(iii). This independence has been compromised since I retired in 2019; the Most Serious Problems section of the Annual Report is now shared with IRS functions for comment prior to delivery of the reports to Congress, thus violating the statutory requirement. In 2013, over IRS objections, I had instituted a procedure whereby IRS functions could review data I proposed to include in the Annual Report, but deferred the comment procedure to after I delivered my final recommendations to the Commissioner, pursuant to I.R.C. § 7803(c)(3).

¹⁷ I.R.C. 7803(c)(2)(B)(ii).

¹⁸ Pub. L. 116-25.

Recommendations Going Forward.

Over the years, I have consulted on and provided assistance with the establishment of advocate/ombuds offices in several countries' and states' tax agencies, as well as by congressional committees and advocacy groups seeking to establish such offices in other federal agencies.¹⁹ To replicate the success of the Office of the Taxpayer Advocate in providing constituent service, such offices should have the following components:

1. *Express statutory authorization for the establishment and mission of the advocate/ombuds office.* The provisions in the Internal Revenue Code establishing the Office of the Taxpayer Advocate are critical to its success. Without them, the agency subject to oversight can marginalize the advocate/ombuds. Many federal agency ombuds that have been established administratively are relatively toothless.²⁰
2. *Independence from the agency subject to oversight, regardless of whether the advocate/ombuds is housed within the agency.* For example, although the National Taxpayer Advocate reports to the Commissioner of Internal Revenue, she is appointed by the Secretary of the Treasury, and only that individual can hire or fire her.²¹
3. *Experience representing constituents before the agency subject to oversight.* IRC § 7803(c)(1)(B)(iii) requires the NTA to have experience in representing individual taxpayers before the IRS, as well as in tax law and customer service. This ensures the head of the advocate/ombuds function understands what constituents face when dealing with the agency.
4. *Local offices in each state.* I believe this geographic presence throughout the United States is the single most important element for good constituent service. It ensures close relationships with the congressional offices and the constituents they serve, and gives the advocate/ombuds real-time, on-the-ground information about the experiences of constituents with the agency subject to oversight. The statutory mandate regarding TAS local offices also protected these offices during periods of agency cost-cutting – the IRS simply could not require TAS to close its offices in Wyoming, Montana, Rhode Island, Alabama or Vermont, even as the IRS itself was reducing staffing or shutting down its local staffing in those places.

¹⁹ Internationally, I have been consulted by the Australian Tax Office and the Australian Parliament, The Netherlands Finance Ministry and The Netherlands Parliament, the Economic Ministry of Azerbaijan, the South African Office of the Taxpayer Ombuds, the Chilean Taxpayer Advocate, and the Mexican Prodecon. I have provided assistance to the state of Oregon and the District of Columbia in the establishment or operation of state taxpayer advocate offices. Within the federal government, I have advised or been consulted on the establishment of ombuds/advocate offices for the Freedom of Information Act (FOIA) ombuds, the Citizen and Immigration Services ombuds, the Consumer Protection Finance Board ombuds, and the Participant and Plan Sponsor Advocate over the Pension Benefit and Guarantee Board.

²⁰ In 2009, the Taxpayer Advocate Service conducted a survey of federal agency external ombuds. See Nat'l Taxpayer Adv., 2009 Annual Report to Congress, *Taxpayer Advocate Service Survey of Federal Government External Ombudsmen*, vol.2 at 105-27 (2009); on the basis of the survey results, I recommended that Congress enact a Federal Agency External Ombuds Act. See Natl. Taxpayer Adv., 2010 Annual Report to Congress, at 412-413 (2010).

²¹ I.R.C. §7803(c)(1)(B)(i)-(ii).

5. *Direct access to all data systems and case management systems relating to cases before the agency subject to oversight.* The IRS has over 60 major case management systems. Were TAS to need to ask the agency's permission to see the case files on those systems each time it received a new case, its work and assistance would grind to a halt.
6. *Statutory authority to require the agency subject to oversight to comply with an order of the advocate/ombuds to take an action, cease an action, or not commence an action with respect to a constituent who is experiencing significant hardship as a result of what the agency is doing or not doing.* The NTA's ability to issue a Taxpayer Assistance Order²² (with respect to a specific taxpayer case) or a Taxpayer Advocate Directive²³ (with respect to a group of taxpayers or a procedure or system of the IRS) ensures that the problems taxpayers experience at the hands of the IRS will receive the highest level of attention and cannot be ignored, stonewalled, or buried in the agency's bureaucracy. While the Commissioner retains the authority to overrule the NTA's orders, the NTA is required by statute to inform Congress of any such order the Commissioner does not comply with. This transparency provides Congress with specific information about agency actions and can lead to systemic improvements.
7. *Annual Reports to Congress.* For Congress to receive an unvarnished, independent assessment, based on on-the-ground experience working with constituents, the advocate/ombuds must have the express statutory authority to issue an annual report to House and Senate committees overseeing the subject agency. That report should be required to be delivered to the committees without any review or comment by the subject agency. The statute should specify what particular items should be included in the report along with a catch-all provision, authorizing the advocate/ombuds to "include such other information as the National Taxpayer Advocate may deem advisable."²⁴
8. *Independent Counsel and attorney advisors.* All agencies have their own counsel. For an advocate/ombuds to perform their duties properly, they need access not only to the agency's counsel (so they can understand the legal reasoning behind the agency's position) but also their own independent counsel, so the advocate/ombuds can form their own legal position with respect to a case or other matter. Further, independent counsel is necessary if the advocate/ombuds is to make legislative recommendations to mitigate problems constituents experience with the agency.
9. *Independent research staff.* A small, independent research staff is necessary for the advocate/ombuds to analyze its own case data and agency data regarding the operation of agency programs. Without its own research staff, and access to agency databases and reports, the advocate/ombuds must rely on agency resources for pulling data. The advocate/ombuds will not know whether all relevant and valuable information has been provided. Further, where the agency has limited resources, the advocate/ombuds' requests for data would be relegated to the bottom of the pile, impairing if not blocking

²² See I.R.C. § 7811.

²³ See I.R.C. § 7803(c)(5).

²⁴ I.R.C. § 7803(c)(2)(B)(ii)(XIII).

the advocate/ombuds' systemic advocacy function and ability to write a meaningful annual report.

My final recommendation is that there are two federal agencies in particular that could benefit from a strong and independent advocate/ombuds that has geographically placed offices – the Social Security Administration and the Department of Veterans Affairs. Both of these agencies have sprawling bureaucracies that deal with vulnerable constituents on a daily basis presenting challenging issues that, if not properly handled, could lead to long term economic, physical, and mental harm, especially in the area of disability claims. Although there are stakeholder groups that can assist and represent constituents in these matters, there is no substitute for a strong internal advocate also taking in the cases where significant hardship arises, and using the data from those cases to advocate for systemic improvement. Thus, I recommend that Congress strengthen constituent service by establishing by statute an Office of Disability Advocate in the Social Security Administration and the Office of Veterans Affairs, along the lines I outline above.

Thank you for the opportunity to share with you my perspective on the constituent service provided by the Office of the Taxpayer Advocate. I look forward to continuing working with your committee on this matter so critical to improving the operation of government and establishing trust.